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ABSTRACT

This Illinois state memorandum to school district superintendents provides clarification of policies regarding discipline of students with disabilities, specifically the issue of multiple suspensions, which may in the aggregate total more than 10 school days per school year, and the amount of services required during disciplinary exclusions. The guidelines are provided in question-and-answer format and are grouped in sections which address the following topics: (1) removal (requirements for special education services during suspensions or expulsions of various lengths); (2) change of placement (definition of a disciplinary "change in placement," student rights to special education services, and qualifications of service providers); (3) functional behavioral assessment and behavioral intervention plans (development of behavior intervention plans by the student's individualized education program team); (4) interim alternative educational setting (options when the student possesses a weapon or drugs, and length of alternative placement); (5) dangerous behavior (standards for determining whether the behavior requires removal or hearings); (6) students not yet eligible for special education and related services (expedited evaluations); (7) reporting a crime; and (8) regulations under the Individuals with Disabilities Education Act, 1997. (DB)

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ED 442 238

Illinois State Board of Education

Discipline of Students with Disabilities

Guidance for the Development and Implementation of District Discipline Policies for Students with Disabilities

Pursuant to the Individuals with Disabilities Education Act Amendents of 1997 and 34 CFR Part 300

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May 1999

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EC 307876

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Discipline of Students with Disabilities
Guidance provided by the Illinois State Board of Education
May 1999

This document has been prepared by the Illinois State Board of Education and is intended to provide guidance regarding the disciplining of students with disabilities and suspected disabilities. This guidance does not carry the weight of regulations, but rather is this agency's interpretation of what the IDEA'97 regulations require and is provided to assist districts in complying with the IDEA Amendments of 1997 and the implementing regulations. Included as part of this document are the IDEA Regulations regarding discipline under the 34 Code of Federal Regulations, Sections 300.121(d) and 300.519-300.529. While not re-stated in this document, many of the responses were formulated from guidance provided in Attachment I of the IDEA regulations – Analysis of Comments and Changes.

For the convenience of the reader, the questions are presented in sections. However, the reader is cautioned that relevant information may be located elsewhere in the document.

Removal

1. Must a school district provide special education and related services to a student with a disability during suspensions of ten school days or less?

No. A school district does not need to provide these services to students with disabilities. However, if any educational services are provided to a child without disabilities during the course of a suspension, then similar services must be provided to the child with a disability (34 CFR § 300.121(d)).

2. When must a school district provide special education and related services to a student with a disability who is suspended or expelled?

A school district must provide a free appropriate public education (FAPE) to all children with disabilities between the ages of 3 and 21, including children with disabilities who have been suspended or expelled from school for more than 10 consecutive school days during the school year or when the child is subjected to a series of removals that constitute a pattern. The determination of whether a series of suspensions creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors considered in making this determination is the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school. See question 3, which further defines a "series of removals that constitute a pattern" (34 CFR §§ 300.121 and 300.519).

3. Can a school district suspend a student with a disability for more than 10 school days during the school year?

Yes. However, if the suspension constitutes a change in placement as defined in question 12, the school district must provide special education and related services.

If the school district suspends a student with disabilities in excess of 10 school days during a school year for separate acts of misconduct, it must maintain in the student's educational record clear and convincing documentation that the exclusions were not related to one another and the misconduct was not related to the child's disability.

It should also be noted that under the federal regulations a manifestation determination and an IEP team meeting to make this determination is only required when the child is subjected to a disciplinary change in placement (34 CFR § 300.523(a)). A disciplinary change in placement would include any removal for more than 10 consecutive school days or a series of removals that constitute a pattern totaling more than 10 school days in a school year.

4. What guidelines should a school district follow when suspending a child with a disability for less than ten consecutive days?

The district should establish a procedure for examining all short-term removals to insure that a pattern of exclusion will not exist. This local procedure should involve a school administrator qualified to supervise the provision of special education and someone other than the individual issuing the suspension. While not required by law, it is recommended that prior to issuing a suspension, the school administrator contact the director of special education regarding the incident and the district's proposed action.

While all students with disabilities are entitled to the same procedural protections and careful examination, the manifestation determination may be more difficult for the student who has a disability such as behavior disordered or learning disabled with ADD or ADHD. It is recommended that in the event that such a special education child must be suspended, a school district representative who is knowledgeable of the student and special education procedures should verify the student's conduct was not related to the student's disability.

Multiple suspensions of less than 10 consecutive school days, but totaling more than 10 days during the school year, should be reviewed by school personnel to insure that a pattern of removals does not exist and to document for the record the relationship between the student's disability and behavior/misconduct. Administratively, school personnel must initially determine whether a series of removals form a pattern of exclusions. While the federal regulations do not

require any action prior to the 10th day of exclusion, it is suggested that school districts, by local policy and practice, examine all exclusions, particularly those exceeding or approaching eight days in aggregate.

5. What do the IDEA regulations mean by "a series of removals that constitute a pattern"?

The IDEA regulations do not provide an explicit definition. Instead, the IDEA regulations provide the following factors that the school district should consider when evaluating whether a series of removals constitute a pattern are (1) length of each removal, (2) the total amount of time the child is removed and (3) the proximity of the removals to one another (34 CFR § 300.519(b)). It is suggested that a series of removals that constitute a pattern also occur when a child's behavior or misconduct can be anticipated, if the misconduct is occurring frequently (more than 2 times in 30 days), or the misconduct is directly related to behaviors noted in the child's case study evaluation and IEP. School personnel should not assume that because the short-term removals are for different discipline code violations that the incidences are not related. One must examine the root of the behavior (for example, impulsiveness) and determine whether or not the behavioral characteristics of the child contributed to the misconduct. The root of the child's behavior may represent a pattern even though the removals are for totally different violations, e.g., smoking, inappropriate language, non-attendance, insubordination, etc. The Congress and courts have not provided clear guidance on this issue. Therefore, it is very important that local school districts establish and consistently apply a definition for determining when "a series of removals that constitute a pattern" exists. While not required, this determination should be supported by two or more individuals and, when it doubt, an IEP meeting should be convened.

6. If a student with a disability has been excluded for 10 cumulative days and engages in an act of misconduct that necessitates another suspension/exclusion, what must a school district do on the 11th day of exclusion?

The federal regulations provide districts with some flexibility with respect to removals exceeding 10 cumulative days. Beginning on the 11th cumulative day in a school year, the school district must provide those services that school personnel (for example, the building principal or other appropriate school personnel) in consultation with the child's special education teacher determine to be necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. An IEP meeting is **not** required to determine the amount or location of the services to be provided during short-term removals that **do not** constitute a "change in placement." However, if a parent or any other member of team requests an IEP meeting in response to the district's decision that the removal

did not constitute a change of placement with respect to short-term exclusions, the IEP meeting shall be convened.

Since IDEA '97 requires "progress in the general curriculum," on the 11th day of removal and beyond, the student with a disability must be provided instruction in all areas of the general education curriculum along with all services specified in the IEP. The services must be provided by qualified personnel. Qualified personnel means individuals with appropriate teaching certification or approvals, or certificates to deliver a particular service or therapy.

7. **If the IEP team changes a student's placement during the course of a school year, does it have any effect on the number of days a school district may suspend a student without providing services?**

None. The district is allowed to remove a student with a disability from school for more than 10 days provided the interruption of services does not represent a change in placement.

8. **If a child moves to a new district during the school year, does it have any effect on the number of days the new school district may suspend the child without providing services?**

No. It is assumed that the child was receiving FAPE in the sending district and will receive FAPE in the receiving district. The receiving district must accept the student and immediately implement the former district's IEP until it (1) convenes an IEP meeting and develops its own IEP or (2) accepts the former district's evaluation and determination of eligibility and implements the IEP as its own. In either case, the number of days the child was suspended in the former district transfers with the child to the new district.

9. **Is the district required to provide written parental notice regarding any suspension or expulsion of a student with a disability?**

Yes. All suspension or expulsion notices and review procedures established by the Section 10-22.6 of the Illinois School Code shall be followed when suspending or expulsion a student with a disability. All notices shall include the right of the parent to appeal the decision and to request an IEP meeting and a due process hearing.

Any suspension or expulsion must be reported immediately (the day the incident occurred) to the parent along with a full statement of the reasons for the discipline, a copy of which is given to the school board. The district shall also provide the parents written notice of their right to request that the district review the suspension decision (Section 5/10-22.6 of the Illinois School Code).

When notifying the parent of the suspension or expulsion, the district shall inform the parent of his/her right to request that the district convene an IEP meeting for the purpose of conducting a manifestation determination if he or she believes that the suspension constitutes a series of removals that constitute a pattern (IDEA'97 Rules Analysis – p.12618).

10. Is an in-school suspension or removal considered as a day of suspension?

No. In-school removals shall **not** be considered as a day of suspension as long as the child is afforded the opportunity to continue to appropriately progress in the general curriculum and continue to receive services specified on the child's IEP. The services provided during in-school suspensions/removals shall be provided by appropriately qualified personnel. The child shall receive credit for the coursework completed during in-school suspensions that are not counted as days of suspension. This type of removal should be addressed in the student's behavioral intervention plan developed as part of the child's IEP and should include whether the in-school suspension will be served (with non-disabled children who are also serving an in-school suspension) and who will be delivering the services on the IEP.

11. Is a removal/suspension for a portion of the school day considered a full day of suspension?

Yes. Generally speaking, any suspension or removal for disciplinary reasons for any portions of a school day is counted as a full day of suspension.

If a child is sent home early from school because of misconduct, the early dismissal must be counted as a day of suspension unless the student's IEP and specifically the Behavioral Intervention Plan calls for the student to receive an abbreviated day when certain behaviors are exhibited.

12. Is a suspension from the bus or transportation provider counted as a day of suspension?

Yes. A bus suspension must be counted as a day of suspension if the following conditions exist:

1. The student's IEP calls for transportation as a related service and

2. The district does not provide another means of transportation.

If the student's IEP does not include transportation as a related service then the suspension from the bus would not count as a day of suspension. The parents would have the same obligation to get the child to school as any non-disabled

child who has been suspended from bus transportation (p. 12619 of IDEA'97 Regulations).

Change of Placement

13. How do the federal regulations define a disciplinary "change in placement"?

A change of placement occurs if a disciplinary removal is for more than ten consecutive school days **or** the child is subjected to a series of removals that constitute a pattern because they are cumulatively more than ten school days in a school year and because of other factors such as length of each removal, total amount of time the child is removed and the proximity of the removals to one another (34 CFR § 300.519).

14. Can a student with a disability be expelled from school or receive a long-term suspension/expulsion?

Yes. If the IEP team concludes that the child's behavior was **not** a manifestation of the child's disability, the child can be disciplined in the same manner as nondisabled children, except that appropriate educational services must be provided (34 CFR § 300.524(a)). This means that if nondisabled children are long-term suspended or expelled for a particular violation of school rules, the child with a disability may also be long-term suspended or expelled. Educational services must be provided to the extent the child's IEP team determines necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward the goals set out in the child's IEP (34 CFR § 300.121(d)(2)).

A long-term suspension or expulsion is defined as any removal from more than 10 consecutive days.

15. How does the IEP team (or the child's special education teacher and school personnel as in the case of short-term removals) determine the amount of services to be provided during disciplinary removals?

A student with a disability removed from school for not more than 10 school days at a time shall receive educational services to the extent to which services are provided to non-disabled students (34 CFR § 300.520(a)(1)).

The amount of services to be provided and the location where the services will be delivered during short-term removals that in the aggregate total less than 10 days or do not constitute a change of placement shall be determined by school personnel, typically the building principal and the child's special education teacher. This is true only in reference to removals that do not comprise a

"change of placement." For removals which comprise a "change in placement," the IEP team must determine FAPE (34CFR 300.121(d)(3).

The amount of services to be provided to a student with a disability removed from school for disciplinary reasons beyond 10 consecutive school days or for a series of removals that constitute a pattern shall be determined on a case-by-case basis by the IEP team. The IEP team shall insure that the amount of services provided is sufficient to allow the student to appropriately progress in the general curriculum, appropriately advance toward achieving the goals on his/her IEP, and progress from grade to grade.

The IEP team shall identify the location of the service with home-based programming being considered only when all other placement options are ruled out. In determining the amount of services needed, the IEP team should not be guided by the home/hospital minimal requirement of 5 hours per week since this is not a home/hospital placement, but rather be guided by what as a group they believe the child needs to meet the goals and objectives of his/her IEP, including the regular education classes and progress in the general curriculum.

The school district should allow the student to accumulate course credit during the suspension of more than 10 consecutive days and expulsions provided the student meets the other criteria established by the IEP team.

16. If a child is removed from school for 10 consecutive days or more than 10 days in aggregate that represent a "change in placement" is the child entitled to participate in extra-curricular and nonacademic classes?

If the district's discipline policy prohibits a student from participating in extra-curricular activities while serving a suspension, this same policy would apply to students with disabilities.

With respect to participation in nonacademic classes, the IEP team should make that determination. A student receiving or participating in a particular activity prior to being removed from his/her current placement does not have a guaranteed right to continue that activity.

17. Must the implementor of the child's IEP, during removals beyond 10 consecutive days or 10 days in the aggregate if a pattern exists or removals to an IAES, be properly certified and/or otherwise qualified?

Yes. When a student with a disability is removed from his/her current placement, the services provided during the exclusionary period must be delivered and supervised by personnel certified or qualified to carry out that particular activity or service.

18. What information must be maintained and reported by local school districts regarding those students with and without disabilities who are suspended and expelled from school?

The State Board of Education is required to collect suspension and expulsion data, which allows for a comparison between nondisabled students and students with disabilities. The data to be collected will include the number of days a student with a disability was suspended and the violation and will be reported by disability, age and setting (LRE). The same information will be collected on nondisabled students. This data will be incorporated into the "End of the Year" report submitted to the State Board of Education by each local school district (34 CFR § 300.146).

Functional Behavioral Assessment and Behavioral Intervention Plans

19. What is the relationship between the district's local behavioral intervention policy and its discipline procedures?

A distinction must be drawn between the district's responsibility to have in place discipline policies and procedures as required by Section 5/24-24 of the Illinois School Code and the district's responsibility under Section 5/14-8.05 of the Illinois School Code to develop policies and procedures on the use of behavioral interventions for students with disabilities.

Each local school district is required to establish policies and procedures that maintain discipline in the schools. Discipline procedures apply when the behavior is not anticipated and are implemented to maintain order in the school. These policies apply to all students including students with disabilities unless there is a specific statement in a student's IEP supporting why the child cannot be held responsible for abiding by the regular discipline code of conduct.

105 ILSC 5/14-8.05 requires that each local district establish

- local policies and procedures on the use of positive behavioral interventions,
- establish and maintain a committee to develop these policies and procedures,
- establish committee membership, and
- establish criteria for determining when a student with a disability may require a behavior intervention plan.

In cases where a student with disability is not required to abide by the schools discipline procedures, a behavioral intervention plan that focuses on remediating misbehavior must be included in the child's IEP. Behavioral interventions are provided on an individualized basis as determined by the IEP team and in accordance with the district's policies and procedures. These interventions are for anticipated behaviors and are non-punitive.

20. When is the school district required to convene an IEP meeting for the purpose of conducting a functional behavior assessment, manifestation determination and/or behavioral intervention plan?

The IEP team must be convened

- For any removal exceeding 10 consecutive school days,
- For all removals amounting to a change in placement (short-term removals totaling more than 10 days that represent a pattern of exclusions), and/or
- For removals resulting in a 45-day placement in an alternative education setting via IEP team (weapons or drugs) or via impartial hearing officer (dangerousness).

The IEP meeting must be convened **not later than** 10 business days after removing a child with a disability for more than 10 consecutive school days or commencing to remove a student for what appears to be a "change of placement" (be it a pattern or drugs/weapons). As with any IEP meeting, written notice of the meeting is required.

21. When must an IEP team be reconvened?

If any one member of the team believes that the behavioral intervention plan needs to be modified, the IEP team must be reconvened to review and revise the plan to the extent the team determines necessary (34 CFR § 300.520).

22. Who must consider the functional behavior analysis and develop a Behavior Intervention Plan, if appropriate?

The IEP team and other qualified participants must consider the functional behavior management plan as a component of the student's IEP. The Behavioral Intervention Plan must

- Summarize the functional behavior assessment findings;
- Summarize prior intervention(s) implemented;
- Describe the behavior interventions(s) to be used to develop or strengthen alternative or more appropriate behaviors;
- Describe any restrictive interventions(s) to be used;
- Identify measurable behavior changes expected and methods of evaluation;
- Identify a schedule for a review of the intervention's effectiveness; and
- Identify provisions for coordinating with parents (34 CFR § 300.520) (105 ILSC 4/14-8.05).

23. Is parental consent required prior to conducting a functional behavioral analysis?

No. The conduct of the functional behavioral assessment **does not** require parental consent **unless** the IEP team decides to conduct individualized

assessments that go beyond the review of existing data. However, districts must give notice immediately to the parents that a functional behavioral assessment will be conducted and what such an assessment includes. The notice must strongly encourage parental participation and attendance at the meeting convened to discuss the results of the functional behavioral assessment.

The content of the notice should include a description of the functional assessment to conducted by the district, such as

1. Collection of information
   - Identify and define the behavior
   - Identify events/circumstances associated with the problem behavior
   - Determine potential function(s) of the problem behavior (34 CFR § 300.502)
2. Develop hypothesis statement about the behavior
   - Statements about the behavior
   - Events/circumstances associated with the problem behavior
   - Function/purpose of the behavior (*Teaching Exceptional Children* Vol.25, No.3, p.46, 1998 the Council for Exceptional Children)

Interim Alternative Educational Setting

24. Can the school district immediately remove a student with a disability from school for possession of a weapon or drugs?

Yes. School personnel have the authority to change the placement of a child with a disability to an appropriate interim alternative educational setting if the child carries a weapon to school or to a school function under the jurisdiction of the state or the school district or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local education agency. This removal may occur even if the IEP team determines that there is a relatedness between the misconduct and the student's disability as determined by a manifestation determination (34 CFR § 300.520(a)(2)).

A "weapon" (defined in 18 USC.Sec.921) means firearms, including a starter gun; the frame or receiver of such a weapon; a muffler or silencer; any destructive device including any explosive incendiary or poison gas bombs, grenades, rockets, missiles, and mines; does not include antique firearms. The term "dangerous weapon" in 18 U.S.C. Section 930(2)(g) has been expanded to include a weapon, device, instrument, material or substance animate or inanimate that is used for or is readily capable of causing death or serious bodily injury, except that such item does not include a pocket knife with a blade of less than 2 ½ inches in length (18 USC Section 930(2)(g)).

A "controlled substance" is a drug or other substance identified in 21 U.S.C. at Section 812(c), schedules I-V. An "illegal drug" is a controlled substance, but

does not include a substance legally used and possessed under the supervision of a licensed health-care professional.

The possession of alcohol and tobacco does not fall under the "controlled substance definition found in 21 U.S.C. Therefore, a school administrator can not move a student to an IAES for the possession of these items. However, a district can enforce its own disciplinary code with respect to possession of alcohol and tobacco. The difference being that if the removal constitutes a "change in placement" the procedures set forth in question 15 must be followed.

25. Can a school district remove a student with a disability for threatening to bring a weapon?

Yes. Once the school district assesses that the threat should be taken seriously, the school district should immediately remove the student from school and request an expedited due process hearing for the purpose of moving a student to an interim alternative educational setting for up to 45 days. The IEP team must also be convened for the purpose of conducting a manifestation determination review and functional behavioral analysis and developing or reviewing the student's behavioral intervention plan. If the parents refuse to waive the 10-day notice period for convening the IEP meeting, the district should proceed without the parents present and be prepared to demonstrate to the hearing officer its attempts to secure the parental involvement.

The Illinois School Code at 14-8.02b) requires that the expedited hearing be convened and the decision issued within 10 days of receipt of the request. Districts have the flexibility to remove a student with no services for up to 10 consecutive days. It is assumed that by the 11th day, the student will go to the IAES ordered by the hearing officer or will return to his/her current program if the district's request to move the student to an IAES is denied.

The option of obtaining a court order to remove the student believed to be dangerous is also available to school districts.

26. If a student brandishes an instrument or item not typically thought of as a "dangerous weapon" can the district move the student to an interim alternative educational setting for up to 45 days?

The definition of a "dangerous weapon" is quite broad and appears to cover any item or instrument in which bodily injury was intended. If bodily injury was intended and if the instrument or item could in fact inflect harm if used, it would be within the district's authority to remove the student in accordance with Section 300.520 of the IDEA'97 regulations.

The district can by local policy determine that a particular item or "weapon" does not meet the criteria of dangerous. This would apply when a student brings a

pocketknife to school for "show and tell" or to carve an apple. Pocketknives should not be brought to school, but some deference and flexibility should be applied when a student makes an honest error in judgement and mistakenly, although knowingly, brings a pocketknife to school. If the pocketknife is, however, used as a weapon or is threatened to be used as a weapon it meets the criteria of "dangerous weapon."

27. Can a student's placement in an interim alternative educational setting exceed 45 days?

Yes. The removal to an interim alternative educational setting (IAES) shall not exceed 45 calendar days unless extended by a hearing officer (34 CFR § 300.526(c)). The fact that the school is in recess during a portion of the 45 days does not "stop the clock" on the 45 days during the school recess (analysis p.12620).

28. Can a student be placed in an interim alternative educational setting for less than 45 days?

Yes. The 45-day interim alternative educational settings are not mandatory. If the parents agree with school officials to a change in the child's placement there is no need to use the 45-day interim alternative educational setting. In some instances school officials or hearing officers may determine that a shorter period of removal is appropriate and that a child can be returned to his or her current educational placement at an earlier time (analysis p. 12620).

29. Who determines the location of the alternative educational setting and the amount of services to be provided?

The IEP team and necessary others determine the location of the IAES. The services to be provided to the child and the location of the IAES shall be determined by the IEP team and must be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP and include services and modifications to address the behavior (34 CFR §§ 300.121(d)(2)(ii) and 300.522).

30. What happens if the IEP team convenes to determine the location of the IAES and disagrees with the district's decision to move the child – can the IEP team overrule the district's decision to move the child to an IAES for a weapons/drug violation?

No. It is clearly within the authority of school personnel to move a child to an IAES for a weapons or drug violation. It is the role of the IEP team to develop an appropriate IEP and make a placement determination.

31. If a child moves to a new district while placed in an IAES, must the receiving district honor the sending district's IAES?

Yes. The receiving district should place the child in an alternative educational setting similar to the sending district's placement until the receiving district's IEP team develops its placement for the child.

Dangerous Behavior

32. If a student engages in behavior or misconduct that school authorities believe is likely to result in injury to the child or others, what should the district do?

The school district shall convene an IEP meeting to review the child's behavior problems that interfere with his or her learning or the learning of others. The IEP team shall review the student's functional behavioral analysis and the implementation of the child's behavioral intervention plan. If the functional behavioral analysis and a behavioral intervention plan were not previously in place, the IEP team and necessary others shall conduct the analysis and develop the behavioral intervention plan. If there is agreement between the child's parents and the school personnel regarding the changes made to the IEP, including a change in placement, there will be no need to bring into play the discipline provisions of IDEA'97. The parents may consent to waive the 10-day notice period, allowing the district to immediately implement the changes made to the IEP. If such a waiver is not provided by the child's parents, the district can remove the child from his or her current placement for up to 10 school days at a time, even over the parents' objection, as long as the discipline is appropriate and is administered consistent with the treatment of nondisabled children (34 CFR § 300.520(a)(1)).

If the child's parents do not agree to a change of placement and school authorities believe that the child is substantially likely to injure self or others in the child's current placement, they can ask an impartial hearing officer to order that the child be removed to an interim alternative educational setting for a period of up to 45 days (34 CFR §§ 300.521 and ISC 14-8.02(b)).

33. What standard will a hearing officer apply in determining whether or not to move the student to an alternative educational setting?

In determining whether or not the child is "substantially likely to injure self or others" the hearing officer will consider

1. The appropriateness of the child's placement; and

2. The efforts made by school personnel to minimize the risk of harm to the child in his or her current placement, including the use of supplementary aids and services

If the school district failed to provide the child with an appropriate placement or to make reasonable efforts to minimize the risk of harm, the hearing officer will deny the district's request to move the child to an alternative setting and will require the district to provide an appropriate placement and make reasonable efforts to minimize the risk of harm.

34. If at the end of the 45-day alternative educational placement the child is still thought to be dangerous, can the district maintain the student in that placement for another 45 days?

Yes, if ordered by a hearing officer. If at the end of the interim alternative educational placement of up to 45 days, school officials believe that it would be dangerous to return the child to the regular placement because the child would be substantially likely to injure self or others in that placement, they can ask the hearing officer to order that the child remain in an interim alternative educational setting for an additional 45 days (34 CFR § 300.536(c)(c)). If necessary, school officials can also request subsequent extensions of the interim alternative educational settings for up to 45 calendar days at a time if they continue to believe that the child would be substantially likely to injure self or others if returned to his or her regular placement (34 CFR § 300.526(c)(4)).

35. Can a school district seek a court order to remove a child from school without first requesting an expedited hearing?

Yes. At any time, school officials may seek to obtain a court order to remove a child with a disability from school or to change a child's current educational placement if they believe that maintaining the child in the current educational placement is substantially likely to result in injury to the child or others. However, the school districts are reminded that there is an expedited hearing process provided in IDEA97 and the Illinois School Code at 14-8.02b, which in most cases will be required by the courts.

Students Not Yet Eligible for Special Education and Related Services

36. When it is alleged that a student who is currently not eligible for special education and related services has a disability, which the district failed to recognize, can the district proceed with its disciplinary removal?

Any student who has not been determined to be eligible for special education and related services and who engages in behavior that violates the school

district's code of conduct shall be disciplined in accordance with the district's discipline policy unless the district had knowledge that the child was a child with a disability (34 CFR § 300.527).

The district will be deemed as having knowledge that a student may have a disability that interferes with educational performance if any one of the following conditions exist:

1. The parent of the child expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to the school that the child is in need of special education and related services.

2. The behavior or performance of the child demonstrates the need for special education and related services.

3. The parent of the child has requested an evaluation of the child in writing to school professional personnel prior to the incident that resulted in disciplinary action.

4. The child's teacher or other school personnel expressed concern about the behavior or performance of the child to the director of special education, building personnel or any other school official that is responsible for child-find activities or involved in the district's referral system. School personnel should be encouraged to put their concerns in writing.

The district would not be deemed to have knowledge if documentation was maintained in the student's educational record affirming that either an evaluation to determine the presence of a disability was conducted and the child was found not eligible or the parent was provided with written notice that the district had considered the need to conduct an evaluation and had determined that an evaluation was not warranted.

37. If a parent of a regular education student requests an expedited evaluation following the district's decision to discipline the student, when must the evaluation be completed?

If following the district's decision to discipline a regular education student the child's parents request a case study evaluation, the evaluation shall be conducted in an expedited matter. While there is no specific timeline for conducting the expedited evaluation, it is assumed that the evaluation will be completed as soon as possible and certainly in far less than 60 school days. It is recommended that this be done in 30 school days.

Until the evaluation is completed, the child shall remain in the educational placement determined by the school, which can include suspension or expulsion without educational services (34 CFR § 300.527(d)(2)).

Reporting a Crime

38. Can school personnel report a crime committed by a child with a disability to law enforcement and judicial authorities?

Yes. The school district shall not be prohibited from reporting a crime committed by a child with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by the child with a disability. The school district must ensure that copies of special education and disciplinary records are also transmitted to the authorities.

Pursuant to the Illinois School Student Records Act (105 ILCS 10/1 et seq.), schools have certain obligations prior to releasing records. ISBE recommends that school districts orally inform law enforcement and judicial authorities about the student's disability status. In such instances, the notification requirements of the state statute should be met and law enforcement officials should be asked to obtain or issue a court order, if possible, authorizing the release of such records. The school district shall insure that prior to the release of any record that could be construed as a mental health record that it be released in accordance with the Mental Health and Developmental Disabilities Act (740 ILSC 110/1 et seq.).

IDEA Regulations regarding Discipline under Sections 300.121(d) and 300.519-529

Sec. 300.121 Free appropriate public education (FAPE).

(d) FAPE for children suspended or expelled from school. (1) A public agency need not provide services during periods of removal under Sec. 300.520(a)(1) to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

(2) In the case of a child with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must--

(i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is--

(A) Under the school personnel's authority to remove for not more

than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519(b) (Sec. 300.520((a)(1)); or

(B) For behavior that is not a manifestation of the child's disability, consistent with Sec. 300.524; and

(ii) Provide services consistent with Sec. 300.522, regarding determination of the appropriate interim alternative educational setting, if the removal is--

(A) For drug or weapons offenses under Sec. 300.520(a)(2); or

(B) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with Sec. 300.521.

(3)(i) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel to remove for not more than 10 consecutive school days as long as that removal does not constitute a change of placement under Sec. 300.519 (Sec. 300.520(a)(1)).

(ii) The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, consistent with Sec. 300.524.

(Authority: 20 U.S.C. 1412(a)(1))

Sec. 300.519 Change of placement for disciplinary removals.

For purposes of removals of a child with a disability from the child's current educational placement under Secs. 300.520-300.529, a change of placement occurs if--

(a) The removal is for more than 10 consecutive school days; or

(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

(Authority: 20 U.S.C. 1415(k))

Sec. 300.520 Authority of school personnel.

(a) School personnel may order--

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Sec. 300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under Sec. 300.121(d); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if--

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under Sec. 300.519, including the action described in paragraph (a)(2) of this section--

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under Sec. 300.519, the IEP team members shall review the

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behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug--

(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Weapon has the meaning given the term ``dangerous weapon'' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k)(1), (10))

Sec. 300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing--

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

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(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of Sec. 300.522(b).

(e) As used in this section, the term substantial evidence means beyond a preponderance of the evidence.

(Authority: 20 U.S.C. 1415(k)(2), (10))

Sec. 300.522 Determination of setting.

(a) General. The interim alternative educational setting referred to in Sec. 300.520(a)(2) must be determined by the IEP team.

(b) Additional requirements. Any interim alternative educational setting in which a child is placed under Secs. 300.520(a)(2) or 300.521 must--

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in Secs. 300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

Sec. 300.523 Manifestation determination review.

(a) General. If an action is contemplated regarding behavior described in Secs. 300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under Sec. 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children--

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in Sec. 300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) Individuals to carry out review. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) Conduct of review. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel--

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including --

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and
(iii) The child's IEP and placement; and
(2) Then determine that--
(i) In relationship to the behavior subject to disciplinary action, the child's IEP and piacement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.
(d) Decision. If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.
(e) Meeting. The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under Sec. 300.520(b).
(f) Deficiencies in IEP or placement. If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

(Authority: 20 U.S.C. 1415(k)(4))

Sec. 300.524 Determination that behavior was not manifestation of disability.

(a) General. If the result of the review described in Sec. 300.523 is a determination, consistent with Sec. 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in Sec. 300.121(d).
(b) Additional requirement. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
(c) Child's status during due process proceedings. Except as provided in Sec. 300.526, Sec. 300.514 applies if a parent requests a

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hearing to challenge a determination, made through the review described in Sec. 300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 U.S.C. 1415(k)(5))

Sec. 300.525 Parent appeal.

(a) General. (1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under Secs. 300.520-300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) Review of decision. (1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of Sec. 300.523(d).

(2) In reviewing a decision under Sec. 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in Sec. 300.521.

(Authority: 20 U.S.C. 1415(k)(6))

Sec. 300.526 Placement during appeals.

(a) General. If a parent requests a hearing or an appeal regarding a disciplinary action described in Sec. 300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in Sec. 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

(b) Current placement. If a child is placed in an interim alternative educational setting pursuant to Sec. 300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) Expedited hearing. (1) If school personnel maintain that it is

dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in Sec. 300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary.

(Authority: 20 U.S.C. 1415(k)(7))

Sec. 300.527 Protections for children not yet eligible for special education and related services.

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in Secs. 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if--

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with Sec. 300.7;

(3) The parent of the child has requested an evaluation of the child pursuant to Secs. 300.530-300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency--

(1) Either--

(i) Conducted an evaluation under Secs. 300.530-300.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with Sec. 300.503.

(d) Conditions that apply if no basis of knowledge. (1) General. If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) Limitations. (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of Secs. 300.520-300.529 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(8))

Sec. 300.528 Expedited due process hearings.

(a) Expedited due process hearings under Secs. 300.521-300.526 must--

(1) Meet the requirements of Sec. 300.509, except that a State may provide that the time periods identified in Secs. 300.509(a)(3) and Sec. 300.509(b) for purposes of expedited due process hearings under Secs. 300.521-300.526 are not less than two business days; and

(2) Be conducted by a due process hearing officer who satisfies the requirements of Sec. 300.508.

(b)(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.

(c) A State may establish different procedural rules for expedited hearings under Secs. 300.521-300.526 than it has established for due process hearings under Sec. 300.507.

(d) The decisions on expedited due process hearings are appealable consistent with Sec. 300.510.

(Authority: 20 U.S.C. 1415(k)(2), (6), (7))

Sec. 300.529 Referral to and action by law enforcement and judicial authorities.

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(9))

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State Superintendent of Education

To: District Superintendents
Directors of Special Education
Other Interested Parties

FROM: Dr. Gordon M. Riffel
Special Assistant to the State Superintendent
Illinois State Board of Education

DATE: June 14, 1999

SUBJECT: *Communication on Discipline of Children with Disabilities*

On March 12, 1999, the final regulations implementing IDEA'97 were published with an effective date of May 11, 1999. The regulations have resolved many of the ambiguities that existed regarding the implementation of IDEA'97 and have to some extent provided school personnel with additional flexibility on critical discipline issues. Since the final regulations were published, we have received numerous inquiries from local administrators regarding discipline of children with disabilities. Specifically, we have been asked to clarify the issue of multiple suspensions, which may in the aggregate total more than 10 school days during the school year, and the amount of services required during disciplinary exclusions.

While not required by statute, building administrators are encouraged to contact their local director of special education or a special education supervisor prior to suspending a student with a disability. In addition, special education teachers should, at least once a year, discuss and review with each student, the school's student discipline code, actions that constitute a violation and the consequences for misbehavior. The serious discipline consequences associated with bringing drugs and weapons to school and acts pertaining to threatening or posing bodily harm to others or self should also be discussed with each student and documentation of that discussion recorded in the student's educational record.

To address these concerns and ensure a consistent response from this agency, I have formed a Critical Action Team to address disciplinary issues as they evolve. The first task of the team was to prepare this document. Secondly, I have asked the team to keep a watchful eye on this issue as it evolves at the national, state

and local levels. If there are questions we have not addressed or responses to current questions that you find unclear, please feel free to contact me.

This guidance supercedes that which was provided to you in the *Special Report "Discipline of Students with Disabilities"* released in the fall of 1997 following the reauthorization of IDEA'97.

It is hoped that this document will clarify key areas of concern expressed by school administrators throughout the state and provide a comprehensive listing of the IDEA regulations governing the discipline of children with disabilities. For the convenience of the reader, the questions are presented in sections. But the reader is cautioned that relevant information may be located elsewhere in the document. This document is provided to assist local school districts in the establishment of local discipline policies and procedures. The document is not intended to be a complete resource document regarding the implementation of behavioral interventions as required by state and federal laws.

I would like to extend my appreciation to the following individuals who participated on the Critical Action Team: Michael Hernandez, Jennifer L. Chan, Gerald Spinner, Bobbie Reguly, Vaughn Morrison, Cindy DeHart, Donna Schertz and Cathy Cox.

We urge you to share this document with principals and other interested staff. We will keep you updated as further information on these key issues evolves. If you have any question, please feel free to contact me at 217/782-5589 or at this agency's Springfield address.